

## Message Text

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ACTION EUR-12

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E.O. 11652: N/A  
TAGS: EGEN, EEC  
SUBJECT: COURT OF JUSTICE APPEAL OF UNITED BRANDS ANTI-  
TRUST CASE

1. THE EUROPEAN COURT OF JUSTICE IS EXPECTED TO DELIVER ITS OPINION SOON ON THE EC COMMISSION'S 1975 DECISION TO FINE UNITED BRANDS ONE MILLION UNITS OF ACCOUNT (UA) AND TO OBLIGE IT TO REDUCE ITS PRICES, ON THE GROUNDS OF ABUSE OF A DOMINANT POSITION IN THE BANANA SECTOR IN THE BENELUX, GERMANY, DENMARK AND IRELAND. THE COMMISSION MAINTAINS THAT UB HAS PROHIBITED RESALE OF BANANAS IN THEIR UNRIPENED STATE (EFFECTIVELY ELIMINATING RE-EXPORT), REFUSED TO SERVE PARTICULAR MARKETS, AND ENGAGED IN DISCRIMINATORY AND EXCESSIVE PRICING.

2. UB IS APPEALING THE DECISION ON GROUNDS THAT ITS MARKET SHARE FOR BANANAS AS CALCULATED BY THE COMMISSION

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(BUT CONTESTED BY UB ITSELF) AMOUNTS TO 45 PERCENT, A MUCH LOWER PERCENTAGE THAN THE 85 PERCENT WHICH HAS BECOME THE INFORMAL NORM FOR ARTICLE 86 (ABUSE OF DOMINANT POSITION) PROCEEDINGS. UNITED BRANDS FEELS THAT WITH SUCH A COMPARATIVELY MODEST SHARE OF THE BANANA MARKET, IT CANNOT BE ACCUSED OF HOLDING A DOMINANT POSITION GIVEN THAT THE PRODUCT IN QUESTION IS

AN AGRICULTURAL COMMODITY WHOSE PRICES VARY IN TERMS OF THE QUANTITY MARKETED. ACCORDING TO UB, THE EXTREMELY LOW BANANA PRICES, THEIR FLUCTUATIONS AND PERSISTENT DECLINE OVER THE PAST 20 YEARS, AS WELL AS THE HEAVY LOSSES SUFFERED BY UB ARE PROOF THAT THE BANANA MARKET IS IN FACT A HIGHLY COMPETITIVE ONE. IN ADDITION, BANANAS COMPETE WITH OTHER FRESH FRUITS - A FACTOR BORNE OUT BY THE MARKED SEASONAL FLUCTUATION IN THE DEMAND- FOR BANANAS. CONSEQUENTLY, IN UNITED BRAND'S OPINION, THE CASE SHOULD COVER THE FRESH FRUIT MARKET IN GENERAL AND NOT FOCUS ON BANANAS ONLY.

4. UNITED BRANDS FURTHER DENIES HAVING FIXED DISCRIMINA-

TORY OR EXCESSIVE PRICES. IT MAINTAINS THAT THE COMPLETE AND ERRONEOUS INFORMATION, AND WHILE UNITED BRANDS APPLIES DISSIMILAR PRICES IN DIFFERENT MARKETS, THIS IS DUE TO THE FACT THAT MARKET CONDITIONS DIFFER FROM ONE MARKET TO ANOTHER.

5. THE UNITED BRANDS APPEAL MAINTAINS THAT THE COMMISSION, AT THE TIME WHEN IT JUDGED UB "CURRENT" PRICES ABUSIVE, DID NOT IN FACT KNOW WHAT THESE PRICES WERE FOR THE WHOLE OF 1975. NOR DID IT SEEK TO ESTABLISH THE EXACT LEVEL OF UB PROFITS. FINALLY UNITED BRANDS CLAIMS THAT PRICE EVIDENCE SUPPLIED BY UB COUNSEL WAS TOTALLY DISREGARDED BY THE COMMISSION.

6. NONETHELESS, DURING THE CLOSING ARGUMENTS IN THE APPEAL: LIMITED OFFICIAL USE

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PROCESS, HENRY MAYROS, ADVOCATE GENERAL OF THE EUROPEAN COURT OF JUSTICE, GAVE STRONG ENDORSEMENT OF THE COMMISSION'S FINDINGS AGAINST UB'S TRADING PRACTICES. MAYROS, CALLING ON THE COURT OF JUSTICE TO REJECT THE UB APPEAL REPORTEDLY SAID THAT THE ONE MILLION U.A. FINE SEEMED COMPLETELY ACCEPTABLE, IF NOT TRIVIAL, WHEN COMPARED TO THE QUOTE COMMISSION UNQUOTE PAID IN 1975 BY UB TO A HONDURAS GENERAL IN AN EFFORT TO OBTAIN CERTAIN COMMERCIAL ADVANTAGES. MOREOVER, MAYROS CLAIMED, THE AMOUNT PAID BEFORE THE AMOUNT DEVOTED BY UB TO ADVERTISING THEIR PRODUCTS. MORRIS

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## Message Attributes

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